because it is not a person "within the jurisdiction". Until it has complied with the laws prerequisite to its entry it therefore cannot claim the protection of this clause of the constitution.[6] Statutes denying foreign corporations, doing business in the state, the right to maintain actions unless they have done certain acts as required by law have been universally sustained.[7] It seems that the right to defend actions cannot be differentiated on principle from the right to sue and may likewise be denied to a corporation unlawfully doing business in the state. Both stand upon the same footing and are governed by the same principles. Until a foreign corporation has complied with the law and put itself in a position to demand the rights accorded to it, it cannot be heard to complain. The suggestion in the court's language that depriving a person of the right of defence would be taking property without due process, would only be applicable to corporations not doing business in the state or to those which have been expressly or impliedly recognized within its borders. Likewise conditions precedent to maintaining actions, and, on principle, to defending actions, cannot be constitutionally imposed on foreign corporations, where the cause of action arises in the course of interstate commerce.[8]

R. J. J.

CRIMINAL LAW: INTERSTATE EXTRADITION: FUGITIVE FROM JUSTICE.[1]—The sole source of the power of a state to extradite springs from article iv, section 2 of the federal constitution and sections 5278 and 5279 of the United States Revised Statutes. Judicial interpretation of these provisions makes clear that two facts must be established as a prerequisite to the exercise of the extradition power. First, a crime must be legally and substantially charged, and secondly, the person sought to be extradited must be a fugitive from justice.[2]

In cases of international extradition, evidence of criminality is required;[3] but our constitutional and congressional enactments as to interstate extradition exact proof of flight instead of evidence

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[6] State v. Hammond Packing Co. (1903), 110 La. 180, 34 So. 368, 98 Am. St. Rep. 459; Pembina Mining Co. v. Pennsylvania (1888), 125 U. S. 181, 31 L. Ed. 650, 8 Sup. Ct. Rep. 737; Philadelphia Fire Assoc. v. New York (1886), 119 U. S. 110, 30 L. Ed. 342, 7 Sup. Ct. Rep. 108; Merchants Natl. Bank v. Ford (1907), 124 Ky. 403, 99 S. W. 260.

[7] Union Cloak and Suit Co. v. Carpenter (1902), 102 Ill. App. 339; South Amboy Terra Cotta Co. v. Poerschke (1904), 45 Misc. 358, 90 N. Y. Supp. 333; Keystone Driller Co. v. Superior Court (1903), 138 Cal. 738, 72 Pac. 398.

[8] Sioux Remedy Co. v. Cope (Nov. 30, 1914), 235 U. S. 197, 35 Sup. Ct. Rep. 57.

[1] (1901), U. S. Comp. Stat. 3597.

[2] Roberts v. Reilly (1885), 116 U. S. 80, 29 L. Ed. 544, 6 Sup. Ct. Rep. 291.

[3] 19 Cyc. 58, note 28, subtitle, "Evidence of Criminality"; 22 U. S. St. at L. 25, 1901 U. S. Comp. Stat. 3593; Benson v. McMahon (1888), 127 U. S. 457, 32 L. Ed. 234, 8 Sup. Ct. Rep. 1240.

of criminality. That is, in place of proof as to the crime itself, the fact of flight is regarded as indicative of the crime. Thus the fact that a person has fled from justice is the vital thing to be proved, and furnishes the real justification for exercising the high prerogative of sending a citizen under duress into another jurisdiction upon a mere charge of his having committed a crime.

In consonance with this apparent intention of the framers of our federal constitution, the courts have uniformly and persistently refused to consider "constructive presence" within the demanding state as being sufficient to constitute one a fugitive from justice; on the contrary, nothing short of actual physical presence within the borders of the demanding state at the time of the alleged crime has ever been held to justify a state in granting extradition papers.[4] One of the latest decisions illustrative of this general principle was handed down by the District Court of Appeal in the *Matter of the Application of Shoemaker for a Writ of Habeas Corpus.*[5] The decision is of more than passing interest, because it involves a novel state of facts, and because it presents the final step in a series of typical cases showing what constitutes constructive presence. The simplest type of case arose, where A, sought to be extradited, had never been within the demanding state. That was a case of constructive presence pure and simple, and hence extradition was held not to lie.[6] The next type of case presented this additional fact: A came into the demanding state a short time after the alleged date of the commission of the crime. The United States Supreme Court, in Hyatt v. Corkran,[7] had to pass on just such a situation, and held that A was not a fugitive from justice. In the course of his opinion, Mr. Justice Peckham stated: "It is difficult to see how a person can be said to have fled from the state in which he is charged to have committed some act amounting to a crime against that state, when in fact he was not within the state at the time the act is said to have been committed." The last typical situation presented itself in the Shoemaker case; there the accused was proved to have been in the demanding state a short time before, as well as after the alleged date of crime. The California court rightly held Shoemaker was not a fugitive from justice within the meaning of the extradition requirements. The language and reasoning of Hyatt v. Corkran

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[4] State v. Hall (1894), 115 N. C. 811, 20 S. E. 729, 44 Am. St. Rep. 501, 28 L. R. A. 289 and note thereto; Hyatt v. Corkran (1903), 188 U. S. 691, at p. 713, 47 L. Ed. 657, 23 Sup. Ct. Rep. 456; see also collection of authorities in 19 Cyc. 87, note 19.

[5] (Sept. 30, 1914), 19 Cal. App. Dec. 470. On petition for rehearing, Oct. 22, 1914, 19 Cal. App. Dec. 525, 144 Pac. 985, 991.

[6] State v. Jackson (1888), 36 Fed. 258, 1 L. R. A. 370.

[7] (1903), 188 U. S. 691, 47 L. Ed. 657, 23 Sup. Ct. Rep. 456.

apply with equal force and propriety to the facts in the principal case, which represents merely a difference in degree, but not in principle.

Where, as in the Shoemaker case, there is no proof that the date stated in the indictment is erroneous, the accused need only show that he was not in the demanding state on the date charged.[8] Of course had the demanding state been able to show that the offense was actually committed on another day and that the accused was within its borders on that day, extradition would have been granted.[9] This, however, throws a difficult burden of proof upon the state. Therefore it would seem that wherever consonant with the rules of good pleading[10] in the state where an indictment, intended for use in extradition proceedings, is drawn, the crime should be alleged to have been committed "on or about" a certain day.[11]

J. C. A.

EVIDENCE: JUDICIAL NOTICE OF LOCAL OPTION ELECTION.—Courts will take judicial notice of a general law. Where a general law provides for a local election, as the "Wyllie Act"[1] in California, will the courts take cognizance of the result of that election? On this point there is a sharp conflict in the various states and the authorities are almost equally divided.[2] California, in the case of *People v. Mueller*[3] adopts the view, that although the court will take judicial notice of the terms and effect of the law, it cannot take judicial notice of the result of the local election

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[8] State v. Schlachter (1907), 21 S. D. 276, 111 N. W. 566.

[9] Hyatt v. Corkran (1903), 188 U. S. 691, 47 L. Ed. 657, 23 Sup. Ct. Rep. 456.

[10] Cal. Pen. Code, § 959, subd. 5, provides that the indictment or information is sufficient if it can be understood therefrom "that the offense was committed at some time prior to the time of finding the indictment or filing of the information". For a collection of some of the authorities on the subject in the various jurisdictions see Bishop's New Criminal Procedure, § 387 and notes 75 and 76 thereto, and § 390 and notes 94 and 95 thereto. Also see 22 Cyc., p. 317, notes 71, 72 and 73, from which it appears that in a great majority of the states, including California, "on or about" a certain day, constitutes a sufficient allegation of the time of commission of a crime, except where the day is essential to the description of the offense.

[11] People v. Baker (1911), 142 App. Div. 598, 127 N. Y. Supp. 382. There the accused was proved to have been within the borders of the demanding state on January 22; the indictment charged the commission of the crime "on or about January 26". The court held the proof sufficient, "for the indictment is not limited to the date of January 26, but charges the commission on or about that date." See also Ex parte Hoffstot (1910), 180 Fed. 240, affirmed in Hoffstot v. Flood (1910), 218 U. S. 665, 31 Sup. Ct. Rep. 222, but no opinion given.

[1] Wyllie Act, 1911 Stats. Cal. 599.

[2] Chamberlayne, The Modern Law of Evidence, §§ 621, 622. The author gives the weight of authority for the view that the court should not take judicial notice under these circumstances.

[3] (October 5, 1914), 48 Cal. Dec. 359, 143 Pac. 748.